

Talanoa

PILON

Pacific Islands Law Officers' Network



November 2017 # Issue 9



Pacific Islands Law Officers' Network 36th Annual Meeting, Majuro, Republic of the Marshall Islands, 18 - 20th October 2017

From 18 to 20 October 2017, the Republic of the Marshall Islands (RMI) generously hosted senior law officials from 15 Pacific nations for the Pacific Islands Law Officers' Network (PILON) Annual Meeting. The meeting was officially opened by the Minister for Justice, Immigration and Labor, the Honorable Mr Michael Halferty, in the presence of RMI President, Her Excellency, Dr Hilda Heine and the Paramount Chief of Majuro Atoll, Iroij Lablab Patrick Lei Zedkaia, who also warmly welcomed delegates.

Minister Halferty remarked on PILON's pivotal role in bringing together senior government lawyers to progress reforms on shared law and justice issues in the Pacific:

"As senior government lawyers, you have a great responsibility to ensure that legal frameworks in our countries work effectively. I urge you to build on the strength of the network to dialogue and engage actively for the benefit of the whole Pacific family," said Minister Halferty.

Dr Filimon Manoni, Attorney General of RMI now assumes the position of the Chair of PILON for the next 12 months. He takes over the chairmanship from the Honourable Joses Gallen, Secretary for Justice and Attorney General of the Federated States of Micronesia.

Acknowledging the range of senior law officials in attendance, Dr Manoni, also noted the valuable opportunity which the forum presented:

"Pacific Island countries face many common challenges, and we can achieve more by working together collectively to tackle them. I am very pleased to have my Pacific colleagues in Majuro for this purpose," said Dr Manoni.



Outgoing PILON Chair Mr Joses Gallen, Secretary for Justice and Attorney General, FSM and new Chair, RMI Attorney General Dr Filimon Manoni

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Mr Gallen also paid tribute to the remarkable work by PILON's three working groups in advancing PILON's objective to strengthen law and justice systems in the Pacific over the previous 12 months.

Reflecting on PILON's leadership over the past year, members thanked Mr Gallen, for his Chairmanship, and commended the Solomon Islands for its generous service to the PILON Executive Committee.

The current PILON Strategic Plan 2016-18 focuses on progressing regional responses to cybercrime; sexual and gender-based violence; and environmental crime and corruption. Members achieved outcomes in each of these priority areas at the Annual Meeting, including:

- the endorsement of *General Principles for Obtaining the Best Evidence from Vulnerable Witnesses to Sexual and Gender Based Violence*;
- the endorsement of *Guiding Principles for Protecting Whistle Blowers and Encouraging Protected Disclosure*; and
- a successful workshop on 'The Pacific response to cybercrime: effective tools and good practice', hosted by the Kingdom of Tonga. Tonga have also kindly agreed to host the next workshop in 2018.

At the conclusion of the busy three day meeting, delegates expressed their gratitude to the staff of the RMI Office of the Attorney General for their outstanding hospitality and hosting of a successful meeting.

Want to know more? [Click here to access the PILON Annual Meeting Outcomes Statement](#) on the [PILON website](#).



Staff of the Attorney General's Office, Republic of the Marshall Islands

Environmental Crime & Corruption Working Group Workshop 21-24th August 2017 Nadi, Fiji



Workshop attendees Eric Iban, RMI; David James, Cook Is; Graham Leung, (Chair) Nauru; Mihaela Stojkoska UNDP; Howard Whitton, Ethicos Group; Janine McFarlane, Australia; Johnson Asher, FSM; Ronald Bei Talasasa Jr, Solomon Islands; Sasae Walter, PILON Secretariat.

The PILON Environmental Crime & Corruption Working Group (ECC Working Group) hosted a workshop in Nadi to discuss some of the key elements of Whistleblower protection schemes to encourage greater disclosure of instances of wrongdoing, in particular, corruption.

Participants acknowledged the importance of robust legal frameworks to support the community's trust and encourage disclosures of wrongdoing. Among the Pacific's key challenges, the workshop identified confidentiality and the difficulties with resourcing an independent and dedicated body for investigating reports of wrongdoing.

The ECC Working Group considered the elements of a Whistleblower protection scheme in line with Article 33 of the United Nations Convention Against Corruption (UNCAC), to which many PILON members are a party. Its principal objective would be to facilitate the investigation of claims of wrongdoing while protecting those who make such reports from retaliation by treating their statements as 'protected disclosures'.



Workshop participants considering the draft Principles for Protecting Whistle Blowers and Encouraging Protected Disclosures

Participants produced *Guiding Principles for Protecting Whistleblowers and Encouraging Protected Disclosures*, which were later considered and endorsed at the 2017 PILON Annual Meeting. Prepared to reflect the relevant provisions in UNCAC, the principles have been prepared to assist PILON member countries to tackle crime and corruption and meet their treaty obligations under UNCAC.

The ECC Working Group acknowledged the sovereignty of each PILON member country and their inherent rights to make individual decisions to adapt protected disclosure laws and policies to their unique legal frameworks and political, cultural and social contexts.



The PILON ECC wishes to thank the following representatives from Australia, New Zealand and UNDP for facilitating a productive workshop:

- i. Jon Fraenkel, Professor of Comparative Politics, Department of Political Science & International Relations, School of History, Philosophy, Politics and International, Victoria University Wellington, New Zealand;
- ii. Mihaela Stojkoska, Anti-Corruption Specialist at the UNDP Pacific Office, Suva, Fiji; and
- iii. Howard Whitton, from the Ethicos Group, Australia.

[Click here to access the *Guiding Principles for Protecting Whistleblowers and Encouraging Protected Disclosures* on the \[PILON website\]\(#\).](#)

2017 Pacific Legislative Drafters' Technical Forum, 23-25th August 2017, Nukualofa, Tonga



The Pacific Legislative Drafters' Technical Forum (the Drafters' Forum) was hosted by the Attorney General's Office of the Kingdom of Tonga in Nuku'alofa, from 23 to 25 August 2017. This year's theme was incorporating model laws into domestic legislation, ensuring they are first tailored to suit the particular legal, institutional and cultural context of each country.

The Drafters' Forum is the regional network for legal officials responsible for drafting laws in Pacific countries. Since its first meeting in 2009, the Drafters' Forum has met on five occasions, providing an opportunity for government lawyers to identify ways to improve legislative drafting services.

The 2017 meeting was attended by legislative drafting officials from 17 countries. Observers also attended from key regional and international organisations with legislative drafting mandates in the region. These included the PILON Secretariat, the Commonwealth Secretariat, and the Secretariat of the Pacific Community.

Countries reported against the goals of the Drafters' Forum Regional Action Plan for Sustainable Legislative Drafting Capacity Building, which is designed to:

- (1) enhance regional networking;
- (2) develop/update legislative development and drafting resources;
- (3) strengthen knowledge, skills and capacities;
- (4) improve regional resources to support legislative implementation of treaty obligations; and
- (5) improve access to laws.

PILON Sexual & Gender-Based Violence Working Group meeting, 17 October 2017, Majuro, RMI



SGBV Workshop delegates Ronald Bei Talasasa Jr, Director of Public Prosecutions, Solomon Islands; Johnathan Kawakami Deputy AG, RMI; Karen Moore, Assistant Secretary, Australia; Graham Leung, Secretary of Justice & Border Control, Nauru

On 17 October 2017, the PILON Sexual and Gender Based Violence (SGBV) Working Group met to finalise *General Principles for Obtaining the Best Evidence from Vulnerable Witnesses to Sexual and Gender-Based Violence Offences*.

The 2016-2018 Strategic Plan of PILON recognizes a commitment by the Pacific Islands Forum to “...eradicate Sexual and Gender-Based Violence in the Pacific region and ensure that all Pacific peoples have equal access to justice and protection under the law”¹.

In keeping with this commitment, the SGBV Working Group resolved to prepare a best practice document for prosecutors and courts in PILON member countries relating to the treatment of child and other vulnerable victims or witnesses of SGBV offences.

It is well established that children and witnesses with an intellectual disability can have particular difficulties when it comes to providing reliable testimony in a court setting. They may suffer from anxiety; have trouble remembering distant events; and/or struggle with complex lines of questioning. Adult victims and witnesses of SGBV offences can also be particularly prone to anxiety, intimidation and self-doubt which can influence their ability to provide reliable evidence. These issues have the potential to negatively impact on the ability of the criminal justice system to ensure that justice is done in SGBV offences.

Although there is no single agreed definition of a ‘vulnerable witness’ and not all adult victims and witnesses of SGBV offences will be vulnerable, the group agreed that it is important to apply any available special measures early and as a matter of course in SGBV offences to support the investigation and prosecution of offences.

The General Principles draw on the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime,² incorporating broad concepts to underpin best practice policies and procedures for protecting the interests of vulnerable witnesses of SGBV offences during criminal proceedings.

The purpose of the General Principles is to maximize the ability of vulnerable witnesses to



Aminiasi Kefu, A/g AG/DPP, Tonga; Lemalu Herman Retzlaff, Chair SGBV WG, AG/DNPO, Samoa & Graham Leung, Secretary for Justice and Border Control, Nauru

give reliable and truthful evidence in court proceedings. They also seek to ensure that the criminal process does no further harm to victims and survivors of SGBV, prioritising their safety while ensuring due process including a fair trial for the accused. Maximising the ability of vulnerable witnesses to provide their best evidence and preventing their re-traumatization may also improve trust in the criminal courts, thereby increasing the likelihood of reporting.

[Click here to access the General Principles for Obtaining the Best Evidence from Vulnerable Witnesses to Sexual and Gender-Based Violence Offences](#) on the [PILON website](#).



Left Tetiro Semilota, AG, Kiribati with Tumai Timeon (2nd from right) and Waimauri Nawaia (right)

¹ This commitment was made by Pacific Islands Forum Leaders at their 2009 meeting in Cairns.

² UN ECOSOC Resolution 2005/20.

Australian Government Legal Policy Twinning Programme Alumnus update



We were excited to hear from Godfrey Male, alumnus of the Australian Government Legal Policy Twinning Program 2016, who recently received three offers from universities in Australia and New Zealand to undertake a Master's degree in 2018 in fisheries policy; the environment and society; and the law.

A lawyer with the Solomon Islands Law Reform Commission, Mr Male is hoping his studies will help develop his skills in statutory interpretation, research, consultation and legislative reform so that he can eventually work to improve his country's out-dated legislation. Reflecting on the offers, Mr Male believes his experience in the Twinning Program helped him demonstrate his suitability as a candidate.

We wish Godfrey all the best with his future endeavours.

The Australian Attorney-General's Department regularly sends updates to all Pacific Legal Policy Champions and Twinning alumni. To update your email details, please contact Jennifer Hyatt at jennifer.hyatt@ag.gov.au.

IN FOCUS – PALAU



by **Steven M. Killelea,**
Office of the Special Prosecutor,
30 October 2017

Alii from Palau! Please let me start by saying thank you for PILON's continued support of the Office of the Special Prosecutor (OSP), and for sharing the good work my office strives to achieve each day with the greater Pacific law enforcement community.

I strongly believe that each jurisdiction adds tremendous value to the PILON community, and the OSP looks forward to further engaging with others in the region to learn how different

communities are combating the unique challenges of our small but diverse jurisdictions.

Please also allow me to give some further context to OSP's work and its unique function in Palau. The OSP is an independent investigating and prosecuting agency in Palau designed to combat corruption and related crime. Through the *Special Prosecutor's Act*, the OSP is tasked with receiving complaints, investigating, and prosecuting allegations of violations of the Constitution and laws of Palau. While this statutory jurisdiction is broad, the OSP focuses on investigating and prosecuting cases which the Ministry of Justice or the Office of the Attorney General are unable to investigate or prosecute because of an actual or potential conflict of interest, or some other ethical consideration.

My office uses its statutory framework as a guide to strategically deploy its limited resources and assure Palauans that the OSP is being the best steward possible in providing government oversight, ensuring government accountability and transparency, while at the same time holding bad actors accountable for criminal conduct.

In PILON's July newsletter, three OSP cases highlighted Palau's commitment to tackling complex criminal conduct such as money laundering, theft of government funds, drug trafficking, code of ethics violations by government officials, as well as how computers and newer technologies are part of an ever-increasing threat in Pacific jurisdictions.

The following cases further illustrate OSP's commitment to weeding out criminal conduct and raising the bar in standard prosecution practice:

| Criminal | Case | No. | 17-011 |
|----------|------|-----|--------|
|----------|------|-----|--------|

The OSP secured a conviction against a foreign-national illicit labor recruiting business operator of one count of guilty to one count of the crime of Obtaining a Government-Issued Identification Document under False Pretenses in the Second Degree. The defendant failed to disclose to Palauan authorities that she had been convicted of a felony when applying for a renewal of her work permit.

○ Criminal Case No. 13-062

The OSP secured a conviction against a defendant on significant criminal charges: one count of people smuggling, two counts of exploiting a trafficked person, one count of aiding and abetting travel document fraud, and one count of aiding and abetting forgery. The defendant engaged in a multi-year criminal enterprise which exploited people recruited from the Philippines to work in Palau. The trafficked persons were induced to come to Palau under false pretenses, brought in illegally, and secured work visas with the use of forged and fraudulent documentation produced by the defendant and her collaborators.

The defendant was sentenced to ten years' probation, with the first year to be served in prison. The Court also ordered the defendant's permanent deportation at the end of her prison term in March 2018.

○ Criminal Case No. 17-037

Defendant Kesolei, the former Executive Director of the Palau Public Lands Authority, induced a South Korean national to give him US \$20,000 in exchange for control over a lease for land in Meyuns, Koror. The victim planned to develop the property. In reality, Kesolei held no rights to dispose of this property. Kesolei provided the victim with two forged documents on Koror State Public Lands Authority letterhead indicating Kesolei had successfully received a lease, and referring to a lot number which did not exist.

Pursuant to an agreement between the OSP and Kesolei, the defendant entered pleas of guilty in the Supreme Court of Palau to two counts of forgery and one count of cheating (larceny by false pretenses). The Court ordered a three year period of deferral of acceptance of the guilty plea. During this deferral period, Defendant Kesolei must make restitution payments totalling US\$20,000 to his victim. Kesolei was also forced to resign from his position as the Executive Director of the Palau Public Lands Authority.

**IN FOCUS –
SAMOA AND NZ**

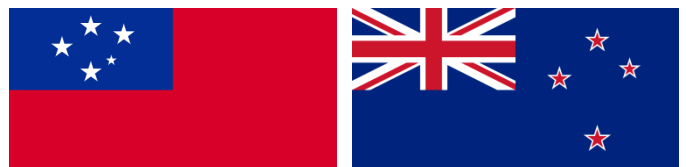


Samoa AG/DNPO Lemalu Hermann Retzlaff and NZ AG Christopher Finlayson QC

Samoa's Attorney General Lemalu Hermann Retzlaff and New Zealand's then Attorney General, Christopher Finlayson QC, met early September 2017 and formally established future ongoing contact between their respective offices.

Finlayson made it clear to Lemalu that links and an ongoing willingness to assist Samoa is not only important, but something he feels personally attached to. *"Whatever can be done to assist Samoa, we are committed,"* said Finlayson. He has links with senior counsel at the local bar in Apia and has, in the past, appeared in court in Apia.

Lemalu then referred to meetings with the Parliamentary Counsel's drafting team of New Zealand, as well as the Law Commission of New Zealand. Lemalu said the Parliamentary Counsel's office of New Zealand has a Pacific desk and he was granted an audience to meet with that team.



Opportunity: PILON Expert Exchange / Secondment Program

PILON SECRETARIAT NEWS

PILON member countries are encouraged to consider law and justice projects which they might be able to complete with assistance under the PILON Expert Exchange/ Secondment Program.

What is it, and how will it work?

PILON member countries requiring assistance with a distinct law and justice project with measurable outcomes which can reasonably be achieved within two to three months should forward their proposal to the PILON Secretariat. Following endorsement by the Executive Committee, the Secretariat will circulate nominations to PILON member countries to advertise within their own agencies for the purposes of identifying a suitable candidate. Candidates must be put forward with the endorsement of their home agency.

Once the receiving country has decided on a suitable candidate from the sending country, both parties as well as the PILON Secretariat will sign a Memorandum of Understanding outlining:

- the objectives, duration and measurable outcomes of the secondment
- the commitment by the sending country to continue to pay the wages of the seconded officer
- the commitment by the receiving country to pay any accommodation and allowance costs of the seconded officer, and
- the commitment by the PILON Secretariat to cover transport and visa costs to and from the receiving country for the seconded officer.

Program objective: To strengthen law and justice outcomes in the Pacific through the secondment of litigators, drafters or advisors between PILON member countries for two to three months at a time.

- Participation will be a significant professional development opportunity for nominated staff.
- The Program will also contribute to strengthening regional law and justice networks and consolidating expertise within the region.

Samoa confirmed to continue to host the PILON Secretariat



Samoa has been confirmed to continue as the host of the Pacific Island Law Officer's Network (PILON) Secretariat, to be housed in the Samoan Office of the Attorney General, with funding generously provided by Australia and New Zealand.

Mr Lemalu Retzlaff, Attorney General of Samoa has also confirmed that Samoa will continue to Chair the PILON Working Group on Sexual and Gender Based Violence (SGBV), as well as remain a member of the governing board of PILON, the PILON Executive Committee. In a press statement, AG Lemalu said:

"This is a vitally important organisation within the region, and its role in increasing the Attorney General Office's interaction must be cultivated and maintained. Samoa is a committed member of PILON and is excited with the future plans to continue to assist other Pacific nations in the difficult areas of law enforcement that we are dealing with."

INTRODUCING PILON's ASSISTANT COORDINATOR, MS VIOLINA TAILUA LEILUA



The Secretariat is very excited to introduce Ms Violina Leilua as the new Assistant Coordinator. Violina is a Law graduate of the University of the South Pacific, and was admitted to the Roll of Barristers and Solicitors of the Supreme Court of Samoa in March 2014.

She joined the Secretariat with experience in legal research, law reform, programming, finance administration, project administration, website development and report writing. Before she took on the Assistant Coordinator role, she was the Programmes and Partnership Executive with the Samoa National Youth Council (SNYC) early 2017.

Previously, Ms Leilua worked at the United Nations Development Programme as a Programme Officer of UN Youth Employment Program ("YEP") and was contracted and placed at the SNYC to take lead in the programming of the Youth Employment Network.

Prior to working for the SNYC, she worked as a legal analyst at the Samoa Law Reform Commission, and some of her responsibilities included researching legal issues referred to the Commission for recommendations.

Since joining the Secretariat, Violina has been working on renewing the PILON Website www.pilonsec.org to make it more accessible for members to research and download information.

Talanoa Culture Corner:

RMI handicrafts

PILON delegates were very impressed with the intricate and finely hand-woven handicrafts of the Marshall Islands. They were absolutely brilliant.

